Newsweek



# Six Supreme Court Decisions to Watch for This Month

By Pema Levy
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It's that time of year again, when the Supreme Court wraps up its term ahead of the summer and court watchers anxiously await decisions in the year's major cases.

Already this term, the nine justices have handed down some momentous decisions: They struck a blow to affirmative action, opened the door to more campaign spending from rich donors and gave a green light to prayer in public meetings.

But some of the court's biggest cases have yet to be decided. Between now and June 26, the Supreme Court will rule on issues from the Affordable Care Act to abortion clinic protections to labor unions.

Here's a look at the top cases to expect this month—and why they matter.



***Sebelius v. Hobby Lobby Stores Inc.*** **and** ***Conestoga Wood Specialties Corp. v. Sebelius***: In the most closely watched cases this term, the Supreme Court's decision will uphold or strike down the Affordable Care Act's requirement that insurance plans include coverage for all contraceptive options approved by the federal government. In the two cases, religious business owners argued that the law violates their religious liberty by forcing them to provide their employees with benefits they object to on religious grounds.

On its face, Obamacare's contraception coverage rule—and coverage for at least tens of thousands of employees and their family members—is on the line. But in the long term, the case could have ramifications on business's ability to claim religious exemptions from federal laws, ranging from coverage of other medical procedures to minimum wage requirements.

The case is likely to come down on the last day of the term, currently scheduled for June 26. As is true of many cases on this ideologically divided court, all eyes are on Justice Anthony Kennedy as the likely deciding vote.

The case has garnered considerable attention, with conservatives generally concerned about freedom of religion issues while liberals want to protect women's access to reproductive coverage options. *Newsweek* covered the oral arguments, as well as the ins and outs of the legal issues at stake.

***Harris v. Quinn:*** An under-the-radar labor case with potentially huge consequences, *Harris v. Quinn* could decide the future of public sector unions. At issue is whether government employees' mandatory payment of union dues is constitutional.

In this case, home-care providers in Illinois who are paid with Medicaid funds are arguing that compulsory payments to the SEIU Healthcare Illinois-Indiana, the union that has negotiated with the state of Illinois to represent home-care workers, violate their First Amendment rights of free speech and association. These mandatory dues are not used for any of the political activities the union undertakes.

Public sector unions have been a target of Republican lawmakers in recent years, as GOP governors like Wisconsin's Scott Walker have sought to roll back unions' bargaining rights. Many conservative groups are supporting Harris and her fellow home-care providers in the case.

But this case could produce a twist on that trend: If the unions prevail, they may have conservative Justice Antonin Scalia to thank. In a 1991 case, Scalia wholeheartedly endorsed the idea that workers who benefit from union negotiations should not be allowed to be "free riders." At oral arguments, Scalia appeared sympathetic to the union's argument.

For millions of public employees, constitutional scholar Garrett Epps wrote after oral arguments in January, "Their collective-bargaining rights are hanging by a thread."

***National Labor Relations Board v. Noel Canning***: Fascination with this complex case about the president's recess appointment power has largely been limited to history and politics nerds. But it could cripple the power of the presidency.

At issue is the president's power to make recess appointments, a common practice in which the president can appoint judges and top administration officials for limited terms without the Senate's approval when Congress is not in session.

A little history is in order to explain this case. The Founding Fathers included the recess appointment authority as an

exception to the general rule that important appointments receive the "advice and consent" of the Senate because, especially in the 18th century, travel made it hard for all Senators to gather quickly. Now, as obstruction of presidential nominees has become common practice in Washington, presidents have coped by using their recess appointment power more often. The Senate has tried to combat this by using technicalities to keep the Senate from officially being in recess, even when the Senate isn't conducting any business for weeks at a time.

This reached a fever pitch under President Obama, and in particular in Republicans' refusal to allow any of his appointments to the National Labor Relations Board (NLRB). Without a quorum on the five-member board, the NLRB could not function. So in January 2012, when the Senate was not technically yet for all intents and purposes in recess, he appointed three new members.

A soft drink company, Noel Canning, challenged the NLRB appointments in the D.C. Circuit Court of Appeals, which ruled that the recess appointment clause was vastly narrower than any president has interpreted it: The D.C. Circuit Court held that the Constitution only allows for recess appointments during the brief recess that occurs every two years between sessions of Congress, and that it only applies to vacancies created during that recess. Essentially, the court nullified the recess appointment power.

At the Supreme Court, oral arguments looked grim for the government defending the recess appointment power as even the liberal justices couldn't find justification for a broad recess appointment power in the Constitution.

In the short term, a decision restricting the appointment power will have little effect. But over the next several years, it could cripple a president's ability to appoint judges, run the executive branch, and allow anti-NLRB Republicans to

essentially kill a government agency by refusing to seat a president's nominees, crippling labor unions who depend on the NLRB.

***American Broadcasting Companies, Inc. v. Aereo, Inc.:*** This case pits the major broadcasters against an online video-streaming startup, but more than the future of one small company is at stake.

Aereo, a two-year-old company, allows its subscribers to stream local, broadcast television over any Internet-connected device. Even though Aereo is pulling content off public airwaves, the broadcasters argue that Aereo is stealing their content.

If Aereo wins, Americans across the country may soon begin to circumvent cable companies by streaming local TV online. Broadcasters may retaliate by taking popular content like the Super Bowl off public television.

But it's not Americans' TV-watching routines that is keeping copyright experts up at night. What's most worrisome is whether the Supreme Court throws copyright law into chaos when it hands down a decision. That could spell trouble for services that use the same technologies as Aereo—major companies using cloud-based storage like Amazon and Dropbox.

As one such worried expert told *Newsweek* in April, "The possibility for upsetting the apple cart considerably with respect to those other services I think is pretty high."

***McCullen v. Coakley:*** This case combines the two issues in which passions run particularly high: the First Amendment and abortion.

Over the past several decades, certain states have responded to heated protests and occasional violence outside abortion

c inics p acing imits on how c ose a protester can e to a c inic seeking to strike a a ance etween the rights of patients and pu ic safet on one side and the free speech rights of those who oppose a ortion on the other. n 1 4 the federa go ernment arred the use of intimidation force and o struction outside c inics.

n Massachusetts the state passed a so-ca ed uffer one aw prohi iting peop e from congregating within 5 feet of a c inic entrance exit or dri ewa . The aw pre ents eanor McCu en a 77- ear-o d grandmother and the p aintiff in this case from tr ing to offer information a out a ternati es to a ortion to women entering the c inic. aw ers for McCu en and other protesters argue that the aw discriminates against peop e ike McCu en for their e iefs in io ation of the ourteenth mendment and si ences speech protected under the irst mendment.

fter ora arguments it seems that Massachusetts is un ike to find fi e otes to upho d its aw. The uestion for man court watchers is not whether Massachusetts s aw is struck down ut whether the court wi hand down a sweeping ru ing striking down uffer one aws across the countr with it.

***Susan B. Anthony List v. Driehaus:*** This case is et another irst mendment cha enge rought a ortion ad ocates. This time the dispute centers on an hio statute that crimina i es intentiona fa se statements made in po itica ad ertisements.

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or procedura reasons the court ma on ru e on whether Susan . nthon ist is a proper part to cha enge the aw sa ing the ig uestions for another da . ut if the court reaches the merits of the hio statute and statutes ike it in 15 other states expect it to e struck down.

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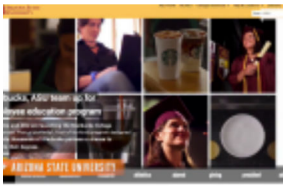

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